IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 1881 of 2007
Date of decision: 19-4-2007

Parminder Singh ...Petitioner

Versus

Financial Commissioner and others ...Respondents.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL
HON'BLE MR. JUSTICE AJAI LAMBA

Present: Mr. M.S.Kang, Advocate
for the petitioner

Ms. Charu Tuli, Sr. D.A.G. Punjab.

Mr.D.S.Patwalia, Advocate, for respondent No.4.

Mr. Ashwani Prashar, Advocate, for respondent No.6.

K.S.GAREWAL, J.

This judgment shall decide petitions filed by Parminder Singh (C.W.P.No. 1881 of 2007) and by Jasminder Singh (CWP No. 137 of 2007).

This case relates to the disputed election to the Board of the Ropar District Co-operative Milk Producers Union Limited (hereinafter referred to as the Milk Union). The Milk Union is a central society and its members are only primary societies.

The two candidates were Jasminder Singh, President of the Shantpur Milk Producers Co-operative Society Limited (hereinafter referred to as the Shantpur Society) and Parminder Singh President of the Bahibalpur Milk Producers Co-operative Society Limited (hereinafter

referred as the Bahibalpur Society). Both societies were part of Zone 5, one of the 12 zones for which elections to the Board of the Milk Union were held in February 2005. Parminder Singh, as representative of the Bahibalpur Society, defeated Jasminder Singh, the representative of the Shantpur Society in a direct contest. The winning margin was considerable.

Parminder Singh's election was challenged through an election petition on the ground that Parminder Singh was ineligible to contest on behalf of the Bahibalpur Society because he was also a member of the Chalaki Milk Producers Co-operative Society (hereinafter referred to as the Chalaki Society). His nominations paper should have been rejected because no one can be a member of two primary societies at the same time. The second ground for challenge was that Parminder Singh was privately supplying milk to the Morinda Chilling Centre. This was a disqualification under Rule 25(c) of the Punjab Cooperative Societies Rules, 1963.

The Additional Registrar (Credit), Co-operative Societies, vide order dated August 2, 2006 concluded that Parminder Singh was admittedly a member of the Chalaki Society and also supplied milk directly to the Morinda Chilling Centre. Therefore, both the grounds of challenge stood proved. The election was set aside.

Both Parminder Singh and Jasminder Singh challenged the said order. Parminder Singh on the ground that he did not suffer from any disqualification while Jasminder Singh's plea was that after the election had been set aside, he remained the sole candidate and should have been declared elected as Director from Zone 5. The appeal was heard by Registrar, Co-operative Societies on August 29, 2006. The order of the Additional Registrar was upheld in respect of Parminder Singh, whose

appeal was dismissed. However, Jasminder Singh's appeal was allowed. He was declared elected being the only candidate left in the field.

Parminder Singh challenged the Registrar's order before the Financial Commissioner (Co-operative) who declined to intervene on the principal plea raised by Parminder Singh but accepted his argument that Jaswinder Singh could not have been declared elected in his place. The Financial Commissioner's order is dated December 12, 2006. It was declared that fresh election should be held.

Parminder Singh has challenged the dismissal of his election petition primarily on the ground that since the society which he represented was not disqualified, any disqualification which he may have incurred could not stand in his way for representing the Bahibalpur Society in the election. In elections to central societies individuals are not members as membership is restricted only to primary societies. Any provision of law which attaches a disqualification to a particular member of a primary society from contesting an election does not debar that person from becoming a representative of his society unless there is a provision which also disqualifies certain categories of persons from representing their respective primary societies. At present there exists no such provision, either under the Punjab Co-operative Societies Act, or the Rules or the bye-laws.

The main contestants are Parminder Singh and Jasminder Singh. Therefore, let us examine what Jasminder Singh has to say. According to Jasminder Singh it had been concurrently found by the Additional Registrar, Registrar and Financial Commissioner that Parminder Singh was ineligible to contest the election. Reference was made to an earlier petition filed by Parminder Singh i.e. C.W.P. No. 20598 of 2006

which was dismissed as withdrawn to enable Parminder Singh to challenge the vires of bye-law 37 of the Milk Union. Jasminder Singh was President of the Shantpur Society while Parminder Singh was President of the the Bahibalpur Society. At the time of the elections Jasminder Singh objected to Parminder Singh's candidature on the ground that he was a member of the Chalaki Society and also a member of the Bahibalpur Society. He could not be a member of two societies. He lived outside the area of the Bahibalpur Society and was not eligible to become a member of that society, hence he was not eligible to contest the election of the Milk Union as a representative of that society.

The short and important question which arises in these petitions is--what are the disqualifications of a representative of a primary society in elections to the Board of a central society? Is bye-law 37(a) which lays down certain disqualifications ultra vires the Punjab Co-operative Societies Act, 1961?

The precise argument of the learned counsel appearing on behalf of Parminder Singh is that under the Punjab Co-operative Rules 1963 the only provision which lays down disqualifications for persons seeking election as Director or member of a co-operative society are given in Rule 25. This rule was framed by the State Government under the rule making power given to it under Section 85(2)(xii) which empowered the Government to make rules to prohibit a society from electing a defaulting member to its Committee or to be its representative.

It has been argued that the rules have been framed under this provision for laying down for disqualifications for members seeking elections, there are no corresponding rules laying down disqualification for

a representative of a co-operative society.

Representatives of societies are appointed in terms of Section 19(2) of the Punjab Co-operative Societies Act. A co-operative society appoints one of its members to vote on its behalf in the affairs of another co-operative society of which it is a member. Therefore, under Section 19(2) a primary society appoints one of its member to vote on its behalf in the affairs of the central society. In the present case Parminder Singh was appointed by the Bahibalpur Society to represent it in the elections to the Central Society which is what the Milk Union is.

The learned counsel for Parminder Singh referred to the Full Bench decision of this Court in Kulwant Singh Vs. State of Punjab and others 1999 (2) P.L.J. 333 in which it was held as under:-

> "But where a Co-operative Society is a member of another Co-operative Society, it is entitled to nominate one of its members to vote on its behalf and in the affairs of that society. The provision of Section 19(2) of the Act are indicative of the legislative intent not to restrict representation of a Primary Cooperative Society to a Central or its Managing Committee or office bearers thereof"
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> AND
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> "Legally unaltered membership of Primary Society of an individual is the very foundation of cause and consequences under these relevant laws, unless the Bye-laws validly framed in consonance with the Act otherwise provide. The loss of the office in the Managing Committee of a Primary Society per se will not become disqualification against the individual in

> relation to his status in the Managing Committee of a Central or Apex Body. It is cessation of basic membership which could result in inviting order under Rule 26(f) of the Rules in the facts and circumstances of the present case."

In Kulwant Singh's case(supra) the petitioner was a member of a particular primary society and was elected its President. He was also nominated by the Managing Committee to represent his society in the election for Director of the Central Society and was so elected. After his election, the Board of Directors of the Central Society was suspended. The matter was challenged and an interim order was passed staying the suspension. The matter did not end here. Kulwant Singh's detractors pursued the matter further and got him suspended as the President of his primary society and, therefore, having incurred disqualification he was sought to be removed as Director of the Central Society. The Full Bench held that where a member earns a disqualification in relation to his membership of the primary society which he represents, he would not cease to be Director of the Board of the Central Society where he represents his primary society.

The Full Bench decision in Kulwant Singh's case had approved the decision of this Court in Thakur Janak Singh Vs. The State of Punjab and others 1974 P.L.J. 119(S.B.) where it was laid down as under:-

> " The delegate or representative has no independent existence and he only represents the Society which is the real member of the Committee and if the Society suffers from a disqualification, its representative cannot be eligible for election. It is not correct to say that what has to be judged or taken into consideration is the personal qualification or

disqualifications of the representative and not of the society which he represents".

The learned counsel for the petitioner also referred to Ajaib Singh Vs.Krishan Saroop 1980 P.L.J. 275 (D.B.) In this case the nomination papers of Ajaib Singh had been rejected on the ground that he was not an active member of his society. Ajaib Singh had been apparently sent to represent his society in the election to the Central Society. The Division Bench held that the disqualification of the society was to be considered and not of its individual representative.

Reference was further made to Kuldeep Singh Vs. State of Haryana 1981 P.L.J. 398 (S.B.) In Kuldeep Singh's case the principle of law laid down in Ajaib Singh's case was adopted and it was held that only disqualification of the society which the member represented could be taken into consideration, "he may suffer personal disqualification on one count or he may suffer personal disqualification on ten counts, his personal disqualification cannot be taken into consideration". Reference was further made to Ranjit Singh Vs. Registrar 1986 P.L.J. 261 DB wherein it was held as under:-

"10. It is true that the provisions of rules 25 and 26 incorporate disqualification and provide for ceasing elected members from holding office. These provisions have to be strictly construed. Even then the construction put on these rules has to be in consonance with the objects of the Act, i.e. Promotion of the co-operative movement in the State. This object can be achieved if the co-operative societies are broad-based, their benefits reach the remotest corner of the State and the humblest

of citizen. For that purpose, the Societies have to be managed and run on business principles of efficient management. Only those members can be allowed to work on the Managing Committees of the Co-operative Societies who have the co-operative principles of thrift and co-operation dear to the heart. This should be manifested by their active participation in the affairs of their Societies and the latter complying with the provisions of the Act and the bye-laws. They should be quick and punctual in repayment of their loans. Those members who are defaulters are a liability for the whole movement. They cannot be allowed to participate in the management of the Societies. The provisions of rules 25 and 26 have to be interpreted in this background. Under the Haryana Act, only primary Societies can be members of the Central and Apex Societies. Bye-laws of the respondent-Bank also show that then members of the Managing Committee (Board of Directors) have to be elected out of the representative of the Primary Co-operative Societies. There may be a Central or Apex Society which does not have even a single individual member. Rules 25 and 26 apply to those Societies as well. They also apply to primary Societies which have only individual as members. So, out of the various disqualifications enumerated in rules 25 and 26, some apply to those Societies as well. They also apply to primary Societies which have only individual as members. So, out of the various disqualifications enumerated in rules 25 and 26, some apply to individuals who are members of the

> Managing Committee of the Societies as representatives of the individuals and there are some which apply to the members of the Committees who represent individual members as as also Primary Societies. If the narrow construction is put on the language of rules 25 and 26, then no representative of the Primary Societies can be disqualified from seeking election or be deemed to have ceased to hold office even if the Primary Societies to whom they represent may have incurred all the disqualifications provided by the Act. Surely, this could not be the intention. The object of the Act can be achieved only if the expression member of the Committee in rule 26 be read mean the Primary Society and not its representative. It is not necessary to dilate on the matter any further as the matter is not res integra."

It is in the above context that the challenge to the impugned orders is to be examined. Parminder Singh also challenged the vires of bye-law 37(b). Both questions can be considered together as they refer to the same factual situation and principle of law. The main argument which the petitioner has advanced is that as a member of a primary (Bahibalpur) society who had been nominated to be its representative for election to the Board of the central society (Milk Union), he possessed two different personalities. As a representative his individual status had no independent existence. He only represented the primary society which was a member of the central society. Therefore, his personal disqualification were not relevant. If the primary society nominated him to represent it in the election to the central society of which only primary societies are

members,it was disqualification of the primary society which is the determining factor and not disqualification of the individual who represents it. To this extent the learned counsel's arguments are valid and there can be no cavil with the position the petitioner has taken.

The next step is to see the nature of disqualification which Parminder Singh has admittedly incurred. Parminder Singh is stated to be a member of two societies although he submitted an application for cancellation of his membership from the Chalaki Society. Parminder Singh had also been supplying milk to the Morinda Chilling Centre in his private capacity. These are individual disqualifications and do not amount to disqualifying the Bahibalpur Society from membership of the Milk Union or from disqualifying said society from sending a representative to the Milk Union. It is quite clear that the Additional Registrar, the Registrar and the Financial Commissioner attached far too much importance to the so called admitted disqualifications incurred by Parminder Singh (the individual) but did not record disqualifications of Parminder Singh (the representative) or the disqualifications of the primary society represented by Parminder Singh.

It needs to be emphasised that primary societies are the electoral college for election to the boards of central societies. Therefore, unless a primary society has been disqualified for any reason, its representative who may be suffering from personal disqualification on any number of counts cannot be debarred from representing the society. This is the continuous trend of judicial authority. Law has been clearly stated in Thakur Janak Singh (1974), Ajaib Singh (1980), Mahinderpal Singh Samundri (1993), Kuldeep Singh (1981), Ranjit Singh (1986) and in the Full Bench decision in Kulwant Singh (1999).

The authorities under the Punjab Co-operative Societies Act, 1961 who passed orders Annexure P-1, P-2 and P-3 had clearly taken the wrong view of law by interpreting it against Parminder Singh, the individual. Therefore, we need not examine the vires of the impugned by-laws.

Resultantly, Parminder Singh's petition (C.W.P.No. 1881 of 2007) is accepted and orders Annexure P-1 dated August 2, 2006, Annexure P-2 dated August 29, 2006 and Annexure P-3 dated December 12, 2006 are hereby quashed. The representative of the Bahibalpur Society shall continue to hold elected office for the remaining duration of the term.

Jasminder Singh's petition (C.W.P. No. 137 of 2007) is dismissed.

No costs.

(K.S.GAREWAL)
JUDGE

(AJAI LAMBA)
JUDGE

April 19, 2007
RSK

Refer to Reporter